

OPENING STATEMENT OF REP. EDWARD J. MARKEY (D-MA)
ENERGY AND AIR QUALITY SUBCOMMITTEE
HEARING ON H.R. 3406
WEDNESDAY, DECEMBER 12, 2001

Thank you, Mr. Chairman.

At the very end of the 1942 Hollywood Classic, Casablanca, Captain Renault, the French police inspector played by Claude Rains, has just pulled up to the crumpled body of the Nazi officer that Humphrey Bogart's character just killed. He jumps out of his car and says, "Major Strausser's been shot." Bogart looks at him with expressionless eyes, and Renault turns to his Gendarmes and says, "Round up the usual suspects."

That's kind of what we are doing here over the next two days. In May, the Majority pulled the plug on its markup of California emergency electricity legislation. In July and August, the Majority short-circuited efforts in the Committee and on the floor to address the electricity problems taking place in the West as part of the comprehensive energy package. And so today, we are rounding up the usual suspects to interrogate them yet again in a process which at this point appears increasingly unlikely to result in enactment of any public law.

Meanwhile, in a hearing room right across the hall from here, another feature is headlining. It involves the dramatic implosion of Enron. Last year, this company was number 7 on the Fortune 500. Today, Enron is essentially a penny stock company reduced to bankruptcy. What happened? Where did all the money go? This little drama is a tale of greed and ambition, with multiple plot twists, elaborate deceptions, villains and victims. It involves complex deals with mysterious insider partnerships dubbed Jedi, Chewbacca, and Raptor. There are accounting firms with apparent amnesia about their public responsibilities, and scores of Enron employees who have just seen their retirement savings evaporate as they stood helplessly by unable to shift funds into other investments.

So I would ask you, Mr. Chairman, is this Subcommittee going to hold any hearings on the Enron debacle before it proceeds to markup an electricity bill? Are we going to thoroughly investigate what happened to Enron and what it means for the emerging electricity markets? Or are we going to engage in the absurd pretense that the collapse of what was once the nation's largest electricity and natural gas marketing company has nothing at all to do with our electricity markets? Does anybody think that if Enron had been subject to greater regulatory oversight, such as the types of rules that we require for traders in securities, traders in futures, or other financial intermediaries, that the types of financial shenanigans that apparently took place would have been allowed to occur? I think not. In the aftermath of the Enron collapse, I think that we need to look very seriously at extending some greater oversight over those who are trading electricity. Right now, the bill we have before us does not address this issue.

What does H.R. 3406 do? From what I can tell, the Chairman's bill essentially tells the Texas Republican Chairman of the Federal Energy Regulatory Commission: "we don't trust Republican-controlled FERC."

For example, this bill says we don't trust you to get the RTO issue right, so we are going to substitute our judgement for yours and tie your hands. So, we are going to give utilities new opportunities to hire lots of high-priced lawyers and file lawsuits to block you from going forward. And we are going to shift the evidentiary requirements for court review, replacing the "substantial evidence" test that has been in place since 1935 with a "preponderance" test that will make it more difficult for you to win in court. We also don't trust you to review power company mergers so we are going to take that authority away from you.

I don't know whether I would agree with all of the things the FERC is doing right now. I haven't had time to review the Commission's recent decisions and its pending RTO proceedings. But I am personally uncomfortable wading into this thicket right now, when this agency finally seem to be focusing serious attention on the issue of market power -- which it seemed incapable of doing under its previous Chairman.

And where is the Bush Administration's electricity restructuring legislation we were promised last May, or the Administration's analysis of the Barton bill that Representative Dingell asked for in September? It appears that the Bush electricity restructuring policy it has been moved to an undisclosed secure location. Perhaps Deputy Secretary Blake can help us find it.

I look forward to today's intramural Republican squabble on electricity policy, Mr. Chairman. I have a lot of questions about your bill, and I hope we can get some answers.